UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2759

September Term, 2015

SHAWN M. LALZARE

v.

STATE OF MARYLAND

Arthur,
Reed,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: October 24, 2016

Shawn Lalzare, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of possession with the intent to distribute amphetamine.[1] Appellant asks a single question on appeal: Did the suppression court err when it denied his motion to suppress statements he made to the police while allegedly in custody and not *Mirandized*[2] following a routine traffic stop? For the reasons that follow, we shall affirm the judgment.

STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress based solely on the record of the suppression hearing, *Cartnail v. State*, 359 Md. 272, 282 (2000), and we review the evidence in the light most favorable to the prevailing party, in this case, the State. *State v. Rucker*, 374 Md. 199, 207 (2003). Moreover, we extend great deference to the fact-finding of the motion court, accepting the facts as found, unless clearly erroneous. *State v. Green*, 375 Md. 595, 607 (2003). We nonetheless make our own independent constitutional appraisal by conducting a de novo review of the law and applying it to the first-level facts as found by the suppression court. *Nathan v. State*, 370 Md. 648, 659 (2002), *cert. denied*, 537 U.S. 1194 (2003). Whether a suspect is in custody during police interrogation is a legal question. *See Rucker*, 374 Md. at 207 ("In determining whether there was custody for purposes of *Miranda*, we accept the trial court's findings of fact unless clearly erroneous" but "[w]e must . . . make an independent constitutional appraisal of the record

[1] Appellant was subsequently sentenced by the court to five years of imprisonment, all suspended, and 18 months of supervised probation.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

to determine the correctness of the trial judge's decision concerning custody")(quotation marks and citation omitted).

SUPPRESSION HEARING FACTS

Prior to trial for possession with intent to distribute 30 amphetamine pills, appellant moved to suppress his statements to the police. At the subsequent suppression hearing, two witnesses testified for the State: Officers William Drew and Matt Stoycos, both with the Montgomery County Police Department. Appellant presented no witnesses.

Officer Drew testified that on the evening of June 26, 2015, he was on routine patrol in an unmarked car near the Lake Forest Mall when he observed a white Nissan traveling at a high rate of speed. The officer pulled in behind the Nissan and clocked it traveling at 42 m.p.h. in a posted 25 m.p.h. zone and saw the Nissan make a right turn without signaling. The officer activated his emergency equipment and stopped the Nissan in a well-lit commercial parking lot.

Officer Drew exited his car and approached the driver's side door of the Nissan. Appellant was sitting in the driver's seat; two other occupants were also in the car. When appellant rolled down the window, the officer detected the "immediate, overwhelming odor of burnt marijuana." About this time, two other officers arrived on the scene but in separate police cars: Sergeant Perkins and Officer Stoycos. Sergeant Perkins walked to the passenger side of the vehicle while Officer Stoycos remained by the patrol vehicles. Officer Drew asked appellant for his identification and registration, and appellant complied. The officer then asked him to step to the back of the car with him, which he also did.

While they stood about 15 to 20 feet behind the Nissan, Officer Drew told appellant that his car smelled like marijuana, and appellant replied that an hour earlier he had smoked marijuana in the car. Officer Drew decided to have the Nissan searched for drugs and drug paraphernalia, and the two occupants were brought to where appellant and Officer Drew were standing.

Officer Stoycos conducted a search of the car while Sergeant Perkins, who had been handed appellant's identification/registration information, ran the information through the police computer. Officer Stoycos testified that when he began the search there was a "pretty strong odor" of marijuana coming from the car. During the search, he found a prescription pill bottle with the label torn off in the driver's side door pocket. The bottle contained about 30 pills labeled "Adderall XR25."

At this point, there was some discrepancy in the testimony. Officer Drew testified that when Officer Stoycos informed him of the prescription bottle discovery, he asked appellant if he had a prescription for the pills. Appellant replied he did not, that he had forgotten they were there. Officer Stoycos testified that after he recovered the bottle, he walked over to the group of three occupants and asked them if they had a prescription for the pills. They all stated, "No," but when he asked who the pills belonged to, appellant said they were his, that he had forgotten they were there. About five minutes elapsed from when appellant was asked to step out of his car to when he made the statement about the pills.

Following his statement, appellant was handcuffed and placed in the front seat of Officer's Drew's car. Officer Drew then verbally advised appellant of his *Miranda* rights,

after which the officer asked appellant if he understood his rights, and appellant said, "Yes." Appellant then told the officer that he planned to sell the pills the following day for a sum of money.

Appellant was driven to a police station and then taken to an interview room where Officer Drew reminded appellant that he had already advised him of his rights and asked him if he wanted them read to him again. Appellant said he did not, that he understood his rights, and he signed a *Miranda* form. Appellant then gave a recorded statement, saying that he had received the pills from his cousin and that he had planned to sell them the following day for a $130 profit.

After the two witnesses testified, defense counsel argued that appellant's statements that he did not have a prescription for the Adderall pills and the pills belonged to him should be suppressed because he was in custody and had not been *Mirandized*. The State argued that appellant was not in custody when he made those statements. After hearing the parties' arguments, the suppression court denied appellant's motion to suppress, reasoning:

> He's stopped on the side of the road, he's in the company of two of his friends and the questions are really being addressed to all three of them.
>
> So it's not an incommunicado interrogation. It's not being conducted by a bunch of officers at gunpoint. There's either one or two officers who are asking the questions. The third officer's a sergeant who sounds like he's more just there to watch what the other two are doing than actively participating. So considering the brevity, considering the nature of the questions, they are sort of although directly related to the offense, they are sort of general in nature and addressed to the three of them. Almost, you know, whose drugs are these?

> Under those circumstances, considering he was in the company of his friends, I don't find that *Miranda* was implicated or therefore required to be given and so the motion to suppress is denied.

It is from this ruling that appellant appeals.

DISCUSSION

Appellant argues, as he did below, that he was in custody but not *Mirandized* when he made the statements following the traffic stop. Therefore, according to appellant, the suppression court erred in not suppressing his statements to the police about the Adderall. The State disagrees, as do we.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that statements made by a suspect during "custodial interrogation" were inadmissible unless he had been informed of certain constitutional rights – called "*Miranda* warnings."[3] "The *Miranda* opinion, however, gave little guidance as to what it meant by 'custody,' only cryptically stating that 'custodial interrogation' is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Rucker*, 374 Md. at 208 (quoting *Miranda*, 384 U.S. at 444)).

The contours of what is meant by "custody," which "is by far the most litigated aspect of *Miranda*" has been refined since the *Miranda* decision. *Whitfield v. State*, 287 Md. 124, 138 (1980). In *California v. Beheler*, 463 U.S. 1121, 1125 (1983), the United

[3] These *Miranda* warnings required that a suspect be told that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444.

States Supreme Court stated that "the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." (quotation marks and citation omitted). In *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)(footnote omitted), the Court emphasized that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." In *Stansbury v. California*, 511 U.S. 318, 323 (1994), the Court stated that the "determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." It is the defendant's burden to show that *Miranda* applies. *Moody v. State*, 209 Md. App. 366, 380 (2013)(citations omitted).

The Supreme Court has more recently stated that two discrete inquiries are essential to a custody determination. *Thompson v. Keohane*, 516 U.S. 99 (1995). The first inquiry is into the circumstances surrounding the interrogation. *Id*. at 112. In *Whitfield*, *supra*, the Court of Appeals listed several factors relevant to the circumstances of custody:

> when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning—whether he came completely on his own, in response to a police request, or escorted by police officers. Finally, what happened after the interrogation—whether the defendant left freely, was detained or arrested—may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

287 Md. at 141 (quotation marks and citation omitted). The second inquiry is, given those circumstances, would a reasonable person have felt he was not at liberty to terminate the interrogation and leave. *Thompson*, 516 U.S. at 112.

Traffic stops are generally not considered custodial for they are more analogous to a *Terry* stop[4] than a formal arrest. *Berkemer*, 468 U.S. at 439 (footnote omitted). This is because of four factors usually attendant to traffic stops: (1) the public nature of the encounter, which reduces a detainee's fear of abuse and the ability of an unscrupulous policeman from abusing his power; (2) the lack of restraints; (3) the brief nature of the detention and questioning in order to dispel or confirm the reason for the stop; and (4) the lack of a statement from the officer that the detention would not be temporary. *Id*. at 436-40.

We find *Rucker*, *supra*, instructive. In that case, two detectives picked up a confidential informant, who had informed the police that Terrence Rucker was involved in drug trafficking, and where and when he could be located. 374 Md. at 203. The detectives drove the informant to this location, where the informant identified Rucker as he was approaching his vehicle in the public parking lot of a shopping center. They radioed an officer in a nearby patrol car to make a stop. That officer pulled in behind Rucker's car, approached Rucker, and asked for his license and registration. Rucker complied, and within moments, the two detectives appeared, but one stepped away from Rucker during questioning. One of the detectives asked Rucker whether "he had anything that he was not

[4] *See Terry v. Ohio*, 392 U.S. 1 (1968).

supposed to have." *Id*. at 204. Without further prompting, Rucker admitted to having cocaine. After the police found cocaine on Rucker, he was arrested and charged with possession of a controlled dangerous substance with the intent to distribute and other offenses. An hour elapsed from when the detectives picked up the informant, and Rucker was placed under arrest.

Rucker moved to suppress his statements and the cocaine, arguing that the police failed to administer him his *Miranda* rights. The suppression court agreed and suppressed the statements. The State appealed and the Court of Appeals reversed the ruling of the suppression court, holding that Rucker was not in "custody" for purposes of *Miranda* when he was stopped and questioned by the police, and that his admissions should not be suppressed because he did not receive *Miranda* warnings before he made his statement. The Court noted that no weapon was drawn, Rucker was not handcuffed or physically restrained until after he admitted to having cocaine, and although Rucker's license and registration were taken from him, their return was not conditioned upon Rucker's cooperation with the police, and no officer ever told Rucker that he would not return the documents. *Id*. at 220-21.

With the above law in mind, we discern no merit to appellant's challenge to his statements. Here, appellant was questioned about the pills in a well-lit public parking lot of a commercial area in the presence of his companions, and the questions, by either one or two officers, were directed to all three of them. No guns were drawn, no one was handcuffed, and the encounter was short, only a few minutes elapsed from when appellant exited his car to when he admitted the pills were his and he was arrested. The stop of

appellant was a brief investigatory stop and remained so until he told the police that the illegal prescription pill bottle belonged to him. Appellant was not in custody for purposes of *Miranda* because he was not restrained to a degree associated with a formal arrest nor was he isolated in a police-dominated atmosphere.

For the reasons above, we are persuaded that the trial court properly concluded that *Miranda* did not apply, and that the trial court committed no error in denying appellant's motion to suppress.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.